IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 102-0 OF 2001
IN
COMPANY PETITION NO.7/B/1998

The Official Liquidator,
High Court of Bombay, Panaji Bench,
represented by M/s Bhartiya Development
Finance Limited (In Liquidation) ..... Applicant

V e r s u s

1. Shri Sumedh S. Zantye,
   152, Sundar Bhatle,
   Arawoli, Vengurla.

2. Mohan B. Jadhav,
   Shiroda, Vengurla. ..... Respondent

Ms. Amira Razaq, Advocate for the Official Liquidator/Applicant.

Mr. V. P. Thali with Ms. Pednekar, Advocate for the Respondent no. 2.

CORAM: N. A. BRITTO, J.

DATE: 24th November, 2006.

ORAL JUDGMENT

Heard Ms. Razaq, the learned Counsel on behalf of the applicant and Shri V. P. Thali, the learned Advocate on behalf of respondent no.2.

2. This claim application is filed by the Official Liquidator for the recovery of a sum of Rs.4,876/- with interest at the rate of 21.5% from 01.01.1999 to 28.02.2001 and future interest, also at the rate of 21.5% per annum.

3. The claim arises out of a loan given by the Company in liquidation namely Bharatiya Development Finance Limited to respondent no.1 with respondent no.2 standing as surety for him. The said loan was given on 19.04.1997.

4. The respondent no.1 was duly served but has chosen not to contest the claim. Respondent no.2 was duly served and has contested the claim of the applicant stating that he did not sign at all any of the documents purported to have been signed by him. Respondent no.2 also stated that the residential address of respondent no.2 was shown as Shiroda, Taluka Vengurla, but the respondent no.2, who is a Laboratory Assistant in Vidhya Vikas Adhyapak Vidhyalaya, Ajgaon, Sawantwadi, has never resided in the said address and always resided at Bomvaddo, Ajgaon, Taluka Sawantwadi, for more than twenty years. In support of the claim, the applicant filed an affidavit of their Senior Technical Assistant and produced the necessary documents. He produced amongst others the application for loan dated 19.04.1997 at exhibit I, Agreement dated 19.04.1997 at exhibit J, Declaration dated 19.04.1997, at exhibit K, the Salary Certificate issued by Vidhya Vikas Adhyapak Vidhyalaya,, dated 23.01.1997 and the Promissory Note dated 19.04.1997 at exhibit N and copy of the loan ledger at exhibit O. Except exhibits L and O, all the aforesaid documents have been shown to have been signed by both the respondents. Respondent no.2 in his evidence has categorically stated that the aforesaid documents have not been signed by him. According to him, he has not

signed the said documents. He however stated that he had not taken any loan from the said Company nor at any time stood as guarantor or as surety in respect of the loan taken by Sumedh S. Zantye, the respondent no.1. To support the said statement and to show in what manner he signs, he produced several documents including permanent account number card, driving license, income tax returns, extract of service book, etc. From the said documents it can be seen that the signature of respondent no.2, as signed on the said documents produced by him, does not tally with the signature on the documents produced on behalf of the applicant to support their claim. When document, exhibit E, the Salary Certificate written in Devanagari was shown to him, he stated that he signed the same for having received the same in Devanagari. It is submitted on behalf of the applicant that the said signature of respondent no.2 at point A of Exhibit E, does not tally with the signatures in Roman script produced by respondent no.2. It may be so. However, the fact remains that the said signature at point A of respondent no.2, in Devanagari as well as the signatures in Roman, on the document produced by respondent no.2, do not tally with any of the documents produced on behalf of the applicant and referred to hereinabove. It was essentially for the applicant to have proved that the documents produced by them, to support their claim, were executed by both the respondents. There is no doubt that the applicant/Official Liquidator received the said documents from the officials of the Company in liquidation. Shri Hazare, the Senior Technical Assistant when cross examined as regards the signature of respondent no.2 on the said documents, stated that he did not try to find out after respondent no.2 disputed his signature on the said disputed certificate

whether it was really his signature. When cross examined further, Shri Hazare stated that he did not know whether respondent no.2 did not stand as a surety or did not sign the documents. He remained satisfied by stating that they had got the documents from the records of the Company, at the same time admitting that he did not know personally the signature of respondent no.2. The applicant also examined the ex-Director of the said Company Shri Pradeep Harmalkar, who stated that he knew that respondent no.1 had applied for a loan to their Company when he was the Director. Thereafter, he explained the procedure for obtaining the loan but stated that all the documents in this case were signed before the concerned Branch Manager of the Company. He also stated that it was for the Branch Officer to ensure the identity of the persons. When he was questioned that respondent no.2, the surety, had not signed the said documents, he stated that he could not say anything because he was not personally present when the said documents were signed by the surety. In further cross examination, he stated that he did not remember the name of the Officer before whom the said documents were signed. Further, he also stated that personally he did not know whether the said Mohan Jadhav had signed the said documents and admitted that he was not acquainted with the signature of respondent no.2. It has been submitted on behalf of the applicant, that the signatures of respondent no.2 do not tally at points A of the copy of Outward School Register and the Salary Certificate, Exhibit E, and both these signatures are different from the signatures of respondent no.2 on documents produced on behalf of the applicant and this shows that respondent is in the habit of signing differently, at different times. However, learned Advocate Shri Thali

submits that the signature at point A i.e. the Salary Certificate dated 23.01.1996, at exhibit E, is identical to the signature at point A, against entry dated 23.10.1997 on the outward register. I do not think it is necessary to enter into this controversy. Suffice it to observe that, the onus to prove that respondent no.2 had executed the surety documents was upon the applicant. Respondent no.2 has categorically stated and substantially substantiated that his signature in Roman script is different from the documents purported to have been signed by him, by producing several authentic documents, referred to hereinabove.

5. It has been submitted on behalf of the applicant that considering the amount claimed, they thought it was necessary to secure an opinion from the handwriting expert, which would have cost them more than the amount due by the respondents. That takes the applicant neither here nor there.

6. There is no acceptable evidence led on behalf of the applicant to prove that the documents were indeed executed by respondent no.2 when respondent no.1 obtained the loan from the Company in liquidation. The claim of the applicant/Official Liquidator against respondent no.2, therefore, needs to be rejected. It has been submitted by Shri Thali that the dismissal of the claim as against respondent no.2 should follow with costs. Considering that the applicant/Official Liquidator has only stepped in the shoes of the Company in liquidation and had to accept whatever records were available with them and proceed on those basis, in my view, this is not a fit case to award costs in favour of

respondent no.2.

7. As far as the claim against respondent no.1 is concerned, on the basis of the evidence and documents produced, the same has got to be held as proved against respondent no.1.

8. Respondent no.1 therefore, is hereby directed to pay to the applicant a sum of Rs.4,876/- with pending interest at the rate of 21.5% and future interest at the rate of 6%, with costs.

9. Learned Advocate Ms. Razaq, on behalf of the applicant/Official Liquidator submits that liberty be granted to the applicant/Official Liquidator to include the decreed claim in misfeasance proceedings pending before this Court. Liberty as available in law.

10. The claim application shall stand decreed as against respondent no.1 as aforesaid and dismissed against respondent no.2.

N. A. BRITTO, J.

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